

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

CONCORD MUSIC GROUP, INC., ET AL.,

Plaintiffs,

v.

ANTHROPIC PBC,

Defendant.

Case No. 3:23-cv-01092

Chief Judge Waverly D. Crenshaw, Jr.  
Magistrate Judge Alistair Newbern

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
AMENDED MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL**

Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, Section 5.07 of Administrative Order 167-1, Local Rules 5.03 and 7.01, and the Stipulated Protective Order (the "Protective Order") entered in this case, ECF No. 62, Plaintiffs Concord Music Group, Inc., Capitol CMG, Inc., Universal Music Corp., Songs of Universal, Inc., Universal Music – MGB NA LLC, Polygram Publishing, Inc., Universal Music – Z Tunes LLC, and ABKCO Music, Inc. (collectively, "Publishers") respectfully move for leave to seal the following documents:

- Plaintiffs' Reply in Support of Motion for Preliminary Injunction, ECF Nos. 91, 92;
- Declaration of Ben Y. Zhao, ECF No. 94; and
- Declaration of Michael D. Smith, and certain attached exhibits, ECF Nos. 91-1, 91-2, 95, 95-1.

Publishers are seeking the Court's leave to seal those documents, including any inadvertently filed on the public docket, to comply with the Protective Order. Defendant Anthropic PBC ("Anthropic") joins in this request. Publishers take no position as to whether sealing is

warranted. To the extent they have not already, Publishers will simultaneously file redacted versions of the above-referenced documents on the public docket.

### **LEGAL STANDARD**

To justify non-disclosure of judicial records, “the proponent of sealing must provide compelling reasons to seal the documents and demonstrate that the sealing is narrowly tailored to those reasons—specifically, by ‘analyz[ing] in detail, document by document, the propriety of secrecy, providing reasons and legal citations.’” *Beauchamp v. Federal Home Loan Mortgage Co.*, 658 F. App’x 202, 207 (6th Cir. 2016) (quoting *Shane Grp, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 305-306 (6th Cir. 2016)).

A party seeking to use a document they did not designate as confidential “must file a motion to seal under [Local Rule 7.01(a)].” Local Rule 5.03(b). “However, the party who designated the materials as confidential or otherwise seeks to restrict access to the materials retains the burden of meeting the requirements set out in subsection (a), either in a joint motion to seal or in a response under [Local Rule] 7.01(a)(3).” *Id.*

### **ARGUMENT**

Publishers move the Court to enter an order to seal the following documents that cite to or discuss documents previously filed under seal by Anthropic or documents produced by Anthropic as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Protective Order:

- Plaintiffs’ Reply in Support of Motion for Preliminary Injunction, ECF Nos. 91, 92;
- Declaration of Ben Y. Zhao, ECF No. 94;
- Declaration of Michael D. Smith, ECF Nos. 91-1, 95;
- Declaration of Michael D. Smith, Exhibit A, ECF Nos. 91-2, 95-1;

Plaintiffs’ Reply in Support of Motion for Preliminary Injunction cites sealed information referenced in Anthropic’s Sealed Opposition to Plaintiffs’ Motion for Preliminary Injunction, ECF

No. 67, and the Sealed Declaration of Jared Kaplan, ECF No. 67-2, relating to Anthropic's training corpora and the development and training of its future generative AI large language models.

The Declaration of Ben Y. Zhao cites sealed information referenced in the Sealed Declaration of Jared Kaplan, ECF No. 67-2, relating to Anthropic's training corpora and the development and training of its future generative AI large language models.

The Declaration of Michael D. Smith and accompanying Exhibit B also cites sealed information relating to Anthropic's development and training of its future generative AI large language models in addition to documents produced by Anthropic designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to the Protective Order. This designation indicates Anthropic's position that it believes in good faith that the information contained therein is "particularly sensitive information" and that its disclosure would create "a substantial risk of harm to [Anthropic], its personnel or customers, or other individuals." Protective Order ¶ 11. Pursuant to paragraph 35 of the Protective Order, Publishers seek to redact select portions of the Plaintiffs' Reply and Declaration of Michael D. Smith that reference information designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or contained in documents previously filed under seal by Anthropic and file unredacted versions under seal. *Id.* ¶ 35.

Publishers take no position as to whether the documents above should be sealed or whether Anthropic's confidentiality designations are warranted. Rather, Publishers request sealing to comply with the Protective Order in this action.

Anthropic joins in Publishers' request to seal references to Anthropic's previously-sealed documents and non-public documents for the following specific reasons, as stated by Anthropic:

- "Information regarding Anthropic's training corpora and the development and training of

its future generative AI large language models is highly confidential and constitutes sensitive business information, including without limitation, Anthropic's proprietary and nonpublic intellectual property, Anthropic's trade secrets, research and development or other data/information related to the same, and proprietary information concerning Anthropic's current and future models. Public disclosure of this competitively sensitive information would prejudice Anthropic and risk revealing key technological processes to competitors and bad actors, as well as subject Anthropic to competitive and financial injury."

- "Anthropic\_0000000001 constitutes highly confidential communications between Anthropic and a third party designated Highly Confidential – Attorneys' Eyes Only by Anthropic pursuant to the parties' Stipulated Protective Order. *See* Dkt. No. 62. Per the Stipulated Protective Order, this document contains highly confidential and competitively sensitive information regarding strategic product and business plans, research and development or other data/information related to the same, confidential business relationships and potential partnerships, as well as other sensitive information. Public disclosure of this information would subject Anthropic to competitive and financial injury."
- "Anthropic\_0000000004-20 constitutes highly confidential communications between Anthropic and a third party designated Highly Confidential – Attorneys' Eyes Only by Anthropic pursuant to the parties' Stipulated Protective Order. *See* Dkt. No. 62. Per the Stipulated Protective Order, this document contains highly confidential and competitively sensitive information regarding strategic product and business plans, research and development or other data/information regarding the same, confidential business

relationships and potential partnerships, and an agreement requiring confidential treatment of the information contained within the document. Public disclosure of this information would subject Anthropic to competitive and financial injury and to legal liability to third parties.”

- “Anthropic\_00000000133-37 constitutes highly confidential communications between Anthropic and a third party designated Highly Confidential – Attorneys’ Eyes Only by Anthropic pursuant to the parties’ Stipulated Protective Order. *See* Dkt. No. 62. Per the Stipulated Protective Order, this document contains highly confidential and competitively sensitive information regarding strategic product and business plans, research and development or other data/information related to the same, confidential business relationships and potential partnerships, as well as other sensitive information. Public disclosure of this information would subject Anthropic to competitive and financial injury.”
- “Anthropic\_00000000232-38 constitutes highly confidential communications between Anthropic and a third party designated Highly Confidential – Attorneys’ Eyes Only by Anthropic pursuant to the parties’ Stipulated Protective Order. *See* Dkt. No. 62. Per the Stipulated Protective Order, this document contains highly confidential and competitively sensitive information regarding strategic product and business plans, research and development or other data/information related to the same, confidential business relationships and potential partnerships, as well as other sensitive information. Public disclosure of this information would subject Anthropic to competitive and financial injury.”
- “Anthropic\_00000000379-81 constitutes a highly confidential communication between

Anthropic and a third party designated Highly Confidential – Attorneys’ Eyes Only by Anthropic pursuant to the parties’ Stipulated Protective Order. *See* Dkt. No. 62. Per the Stipulated Protective Order, this document contains highly confidential and competitively sensitive information regarding strategic product and business plans, research and development or other data/information related to the same, confidential business relationships and potential partnerships, as well as other sensitive information. Public disclosure of this information would subject Anthropic to competitive and financial injury.”

### **CONCLUSION**

For the reasons set forth, Publishers respectfully request leave to file Plaintiffs’ Reply in Support of Motion for Preliminary Injunction, the Declaration of Ben Y. Zhao, the Declaration of Michael D. Smith, and certain attached exhibits under seal and to file unredacted versions on the public docket. Anthropic joins in this request.

Dated: February 15, 2024

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## **CERTIFICATE OF SERVICE**

I hereby certify that on February 15, 2024, I authorized the electronic filing of a true and exact copy of the foregoing with the Clerk of the Court using the CM/ECF system, which sent notice of such filing to the following:

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